

Standard Operating Procedures (SOP)
For
Equal Employment Opportunity Counselors

REFERENCES:

- a. 29 CFR 1614
- b. DoD Directive 1440.1 Civilian Equal Employment Opportunity Program
- c. NGR (AR) 690-600/NGR (AF) 40-1614, National Guard Civilian Discrimination Complaint System, Vol I & II
- d. Equal Employment Opportunity Commission Management Directive, MD-110

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PURPOSE:

This guide provides an outline of procedures for Kansas Army & Air National Guard EEO Counselors in resolving EEO complaints. They can follow this guide when required to conduct an inquiry and prepare a counselor's report of the efforts made on behalf of resolving the complaint.

OVERVIEW:

1. **EEO COUNSELOR.** EEO Counselors are appointed by the Adjutant General. They are authorized IAW NGR (AR) 690-600/NGR (AF) 40-1614, to conduct inquiries into allegations of discrimination.
2. **MATTERS TO BE COUNSELED.** Complaints based on race, color, religion, gender, national origin, age or handicap discrimination, prohibited by Title VII, Civil Rights Act of 1964, as amended, Age Discrimination in Employment Act (ADEA), and NGR (AR) 690-600/NGR (AF) 40-1614.
3. **COUNSELOR QUALIFICATIONS.** Each counselor must complete a minimum 32 hours discrimination complaint counseling training before being authorized to counsel a complainant. Formal training includes, as a minimum, a basic EEO counseling course sponsored by the SEEM, NGB or equivalent agency. Each counselor must complete an additional 8-hour refresher training annually, IAW EEOC MD 110 and NGB.
4. **PROBLEM SOLVING.** Counselors are expected to use basic problem solving techniques to resolve complaints and function as fact finders to conduct a thorough inquiry. Both complainant and management expect a thorough inquiry.
5. **DIGNITY.** Counselors must maintain the proper military atmosphere. An unbiased, polite approach will encourage witnesses to cooperate, essential to the inquiry.
6. **FAIR TREATMENT.** Counselors have a responsibility to the person who may be the subject of the inquiry. Counselors must protect persons from any appearance of injustice that may be attributed to their procedures or actions. Assume that the inquiry implies neither guilt nor innocence of the persons involved.
7. **FACT FINDER.** Counselors examine the facts bearing on the situation and make an accurate and impartial report. All decisions and actions must be based on the facts. Insure the data supporting these facts is accurate and reliable.

PRE-COMPLAINT PROCESSING TIME SEQUENCE (30 calendar days) time the EEO counselor has to conduct informal resolution of the issue(s).

Date of Incident + 45 calendar days – Time allowed for complainant to file a complaint

- Complainant contacts EEO counselor. (Go to Initial Interview)

OR

- Complainant contacts SEEM
- SEEM refers complainant to designated EEO counselor

INITIAL INTERVIEW WITH EEO COUNSELOR

- Counselor listens to complainant and obtains relevant information
- Counselor helps complainant define the specific EEO issue(s)
- Counselor helps the complainant identify the basis (race, religion, color, gender, national origin, age or handicap)
- Counselor explains the EEO counseling process and time frames
- Review processing flow chart
- Review all initial Counseling Forms and complete applicable forms (Atchs 1 -9)
- Develop a list of witnesses
- Counselor attempts to resolve the complaint
- Counselor notifies SEEM of complaint

CONDUCT INQUIRY (if ADR is not selected)

- Counselor informs immediate supervisor a complaint was filed
- Review and revise issue statement as necessary
- Develop list of witnesses
- Counselor develops questions, strategies and reviews with SEEM
- Counselor interviews all witnesses
- Record notes at each interview
- Meet with the Complainant again and offer any resolution the Supervisor has offered.
- EEO counselor needs additional time to resolve complaint
- Counselor reviews and complainant signs and dates Agreement to Extend Counseling for 30 Days (Atch 10)

OR

- Complainant indicates decision to withdraw his/her complaint, then
- EEO counselor requests complainant sign and date Voluntary Withdrawal (Atch 14)
- The counselor and SEEM determine what resolution strategies may be used
- Discuss extension vs. Alternate Dispute Resolution
- Joint meeting
- Separate meeting
- Telephone conversation

DISPUTE RESOLUTION OFFERED BY COUNSELOR.

- Complainant decides to participate.
- Complainant signs Agreement to Participate in Alternate Dispute Resolution
- Counselor Contacts SEEM.
- SEEM identifies a qualified Mediator in coordination with NGB-EO-C
- SEEM identifies authorized Management Official to participate in Mediation
- SEEM coordinates mediation meeting.

OR

- Complainant decides not to participate in Alternate Dispute Resolution

THEN

FINAL COUNSELING INTERVIEW

- In person, EEO counselor signs Notice of Final Interview (Atch 12)
- By mail, EEO Counselor signs and mails Notice of Final Interview
(*Certified Mail Return Receipt*) (Atch 13)

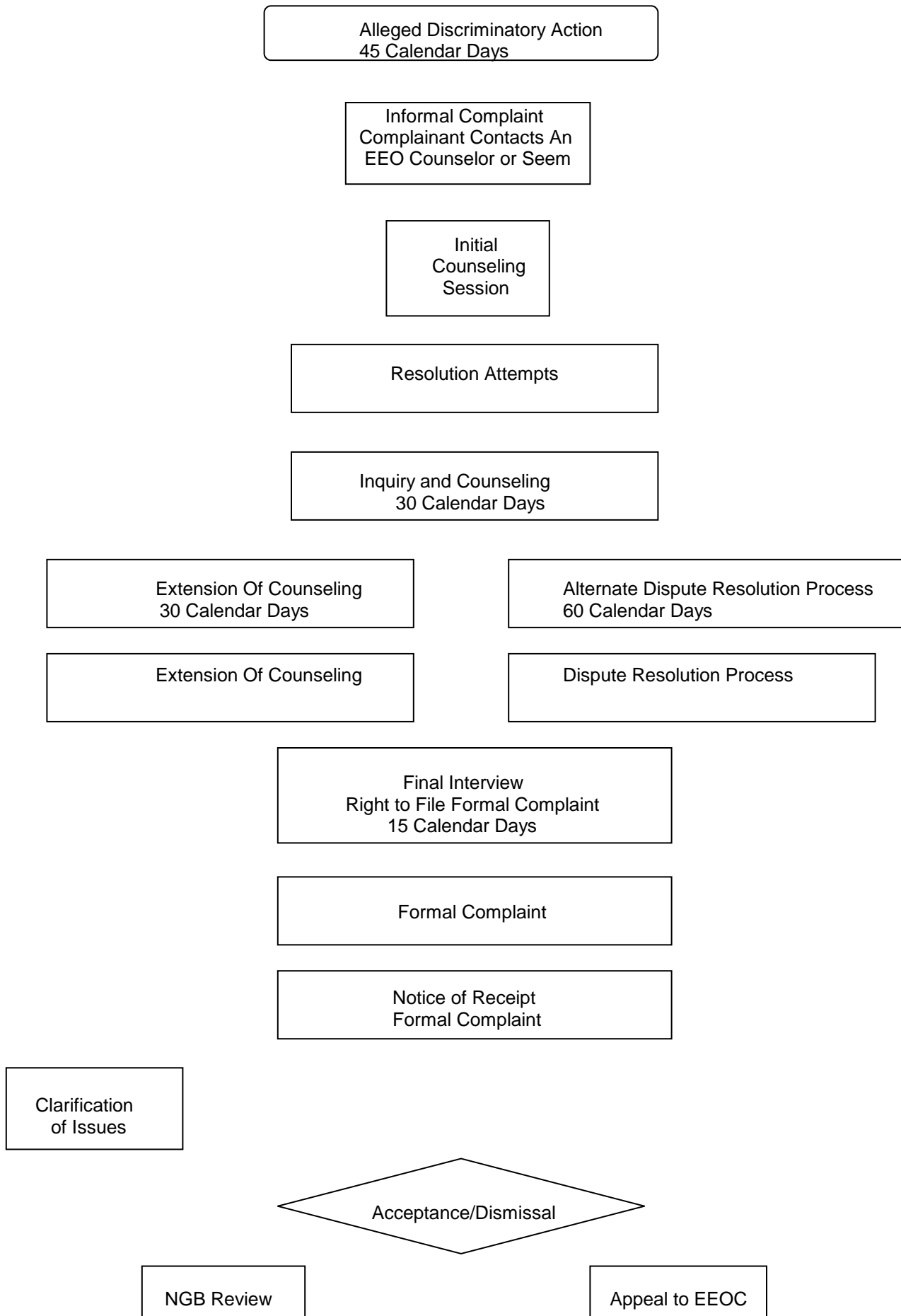
COMPLAINANT DECIDES TO FILE FORMAL COMPLAINT

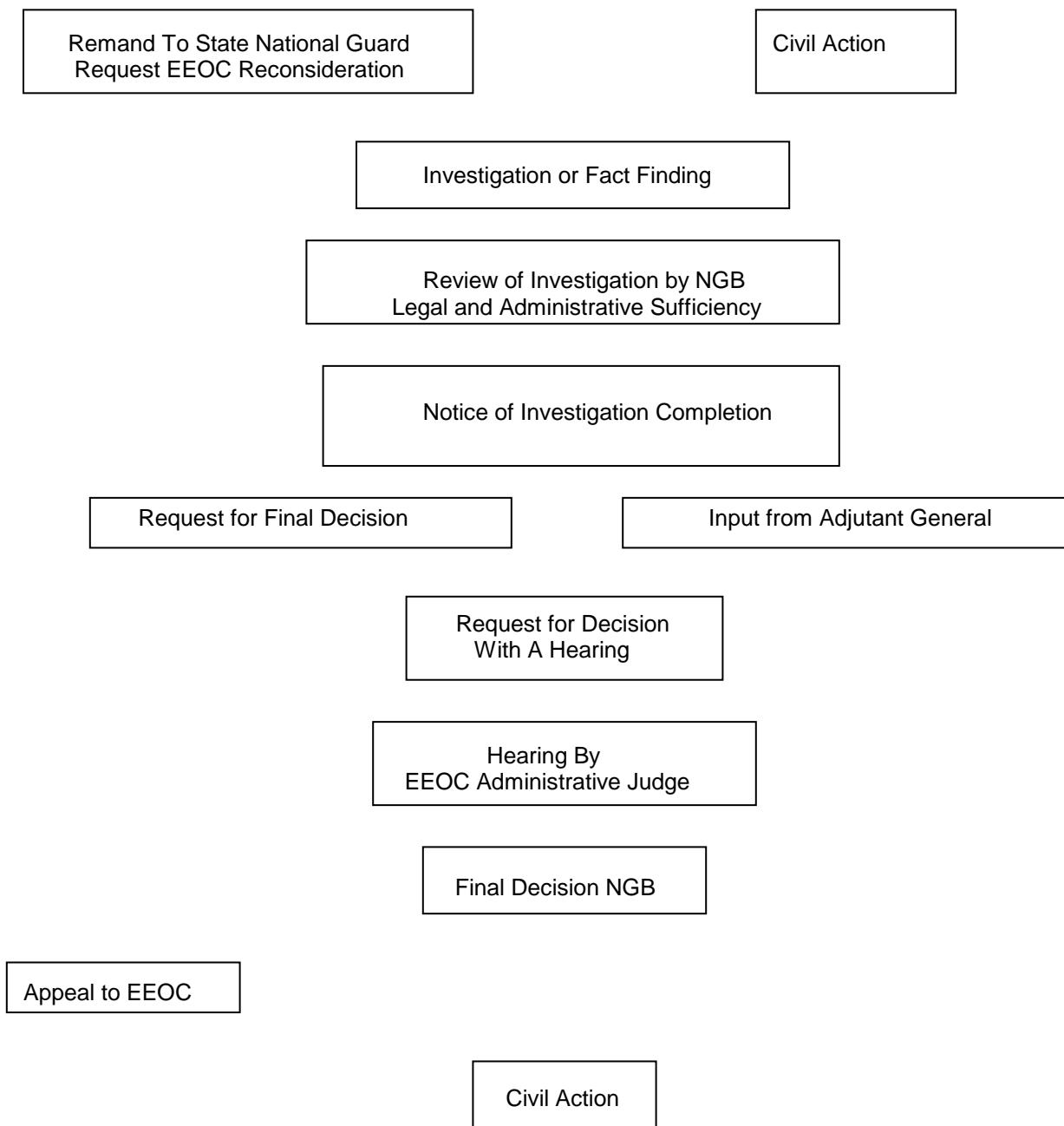
- Counselor provides complainant with a copy of NGB form 713-5

Counselor forwards Counselor's Report to SEEM

- ***Final interview + 3 calendar days***

Pre-complaint Processing Flow Chart





QUESTIONS TO ASK COMPLAINANT AT INITIAL MEETING

The first questions to ask each complainant are the following:

1. What is the action you allege was discriminatory?
1. What is the basis (race, color, religion, national origin, gender, age, or handicap) (The complainant must pick one or more bases)
2. What makes you believe the action(s) taken were discriminatory?
3. Did the management official say or do anything, which leads you to believe he/she took this action based on your race, color, religion, national origin, gender, age, or handicap? Complainant should be able to articulate a specific incident or relate something said or done which is based on the individual's protected status.

NOTE to EEO COUNSELOR: (Remember just because the complainant feels that they were discriminated against, i.e. they are Black and the selectee is white or they are female and the selectee was a male, etc. does not in itself give credence to a complaint of discrimination.)

4. Did the named management official mention your race, age, gender etc. or make some statement, which indicates he/she wants a non-minority, younger person, male etc.?
5. What resolution are you looking for? (This is what you as the EEO counselor are working for.)
6. What makes you believe _____ discriminated against you based on your _____ (race, color, religion, gender, national origin, age or handicap)?
(This question should be restated for each basis identified by the complainant.)
7. Simply because an individual is a member of a protected class does not mean the action or event is discriminatory, i.e., not selected for a job, promotion or they receive some adverse action, etc. (*There must be a nexus (connection) between the action and their protected status.*)
8. What did _____ say or do which leads you to believe he/she treated you differently because of this status? (race, color, religion, gender, national origin, age or handicap)?
9. What will resolve this situation (complaint)?
(*Must state clearly what will RESOLVE the situation; this is what the counselor works toward.*)
(*Punishment of the alleged responsible official(s) is not a resolution. Punishment is a management responsibility.*)
10. What have you done to attempt to resolve this situation?

	INQUIRY PREPARATION CHECKLIST
	Before beginning any inquiry, review this SOP and NGR (AR) 690-600/NGR (AF) 40-1614. This will help you get a clear picture of the matters you will be looking into, and develop an effective plan of action.
	Prior to the start of your inquiry, contact the State Equal Employment Manager (SEEM) to review inquiry techniques and procedures.
	Plan the inquiry; outline the allegations, the list of witnesses and the evidence that must be obtained.
	If you are conducting this inquiry in a unit other than where you are assigned, notify the installation commander of the expected visit. Also, advise the commander of the purpose of the visit without specifying details.
	BEGINNING EEO INQUIRY Make sure the following items have been checked:
	Do you have a copy of your appointment letter?
	Do you have a copy of the written complaint including all documents and attachments?
	Call and discuss with the SEEM, appropriate inquiry techniques and procedures?
	Have you identified the specific allegation(s)? (Atch 2)
	Did the complainant sign a written statement authorizing the use of his/her name in processing this complaint? (Atch 5)
	Have you identified the person(s) against whom the allegations have been made? (See Atch 2)
	Do you have a clear idea of the type(s) of evidence that will be necessary to substantiate or disprove the allegations?
	Do you have a plan of procedure?
	Have you developed a list of witnesses? <i>(list of witnesses should be provided by complainant; ask what information they have to offer. This applies to the named management official and others you identify).</i>
	Have you identified which witnesses you will interview first?
	Has the individual/management official named been provided the allegations made against them?
	Have you developed a list of specific questions to ask each witness? <i>(Write out the questions you will ask, to stay focused on the specific issue(s)).</i>
	Have you arranged for clerical support?
	Do you have copies of each necessary regulation or document?
	Have you obtained the name of the Commander, at the location where the inquiry will be conducted?
	Have you arranged for transportation and accommodations?
	Have you informed the command of the upcoming inquiry?
	Do you need/have your travel orders?
	Have you informed your supervisor of your locations and arranged to keep them informed of your progress?
	Have you secured a private office to conduct your interviews?
	Explain the circumstances if interviewing outside of the workplace.

EVIDENCE AND EXHIBITS

List the evidence and exhibits, which provide information about the matter(s) giving rise to the complaint, in the following order:

- ☐ Complainant's statement.
- ☐ Statement of the named management official.
- ☐ Pertinent records and statements of witnesses.
- ☐ Other information (i.e., organization charts, or information regarding similarly situated persons whose treatment is subject to comparison with that of the complainant.)
- ☐ Selection Certificate/Personnel Action (as appropriate).
- ☐ A copy of the disclosure authorization/certification of anonymity.
- ☐ A signed copy of the complainant's Designation of a Representative authorization.
- ☐ A copy of the "Notice of Right to File a Discrimination Complaint," signed and given to the complainant at the end of the 30 day counseling/inquiry period.
- ☐ A copy of the "Notice of Final Interview with an EEO Counselor," signed and given to the complainant at the termination of the counseling/inquiry process.
- ☐ Attach a copy of the settlement agreement, if used in the resolution process.
- ☐ Attach any other items pertinent to the complaint.

The U.S. Equal Employment Opportunity Commission

**EQUAL EMPLOYMENT OPPORTUNITY
(COUNSELORS, SEPMS & COMMITTEE MEMBERS)**

OFFICIAL TIMESHEET

Date _____

Complete this worksheet and have your immediate supervisor sign it. Send completed form to JFHQ-HRO-EO.

1. Name: _____
2. Activity/Work Area: _____
3. Agency of Member (Air or Army): _____
4. Member's Telephone Number: _____
 DSN _____ Commercial _____
5. Purpose of Official Time: _____
 - ☐ Training (specify): _____
 - ☐ Committee Meeting (specify): _____
 - ☐ Observance Planning: _____
 - ☐ EEO Counselor Contact: _____
 - ☐ AEP Planning: _____
 - ☐ Networking: _____
 - ☐ Other (specify): _____
6. Time Spent Performing Member Duties: _____
7. Individual's Signature: _____
8. Supervisor's Signature: _____

ISSUE STATEMENT WORKSHEET

1. Issue Number _____
2. Date of Alleged Discriminatory Event _____
3. Circle the reason or reasons for which you feel you have been discriminated against.

a. Race	e. Sex (female/male)
b. Color Age	f. Reprisal
c. Religion	g. Disability
d. National origin (Latino/Hispanic)	h. National origin (non-Latino/Hispanic)

4. Circle the matter this issue pertains to. More than one item may be circled.

a. Promotion	i. Time and attendance	q. Reinstatement
b. Harassment (non-sexual)	j. Appointment/hire	r. Examinations/tests
c. Termination	k. Reassignment	s. Retirement
d. Assignment of duties	l. Pay (including overtime)	t. Demotion
e. Evaluation and appraisal	m. Training	u. Conversion to full-time
f. Reprimand	n. Duty hours	v. Other disciplinary actions
g. Suspension	o. Sexual harassment	w. Other (explain)
h. Awards	p. Working conditions	

5. Alleged discriminating official/organization:

6. Identify alleged discriminatory event. Explain how you were discriminated against; in what way. Furnish specific, factual information to support this statement. Explain the connection between the information you have presented.

Signature

Date

Work Phone _____

Index of Attachments

Attachments 1-13 contain the notices and memorandums required for conducting EEO counseling. They include the notices to be signed by the counselor and the aggrieved party.

Earlier editions are obsolete and should not be used.

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EEO COUNSELORS CHECKLIST

Complainant's Name: _____ EEO Counselor's Name: _____
 Telephone #: _____

REQUIRED ACTIONS FOR INFORMAL COMPLAINTS BY EEO COUNSELORS	DATE INITIATED AND/OR COMPLETED YY/MM/DD	COMMENTS
Notification of Complaint		Note: Initial counseling no later than 5 days from notification date.
Initial counseling		Sign forms during initial contact Identify witnesses and documents needed.
Inquiry		Document interview questions and answers and witness statements.
Memo subj: The Pre-complaint Process		Only use this form if someone contacts you, but does not want to pursue a complaint. Note: Use letter during initial counseling session
Memo subj: Right and Responsibilities for Complainants of Discrimination (Age and Election of Procedures)		Note : Use letter during initial counseling session. Have complainant initial the Age and Election of Procedures forms.
Memo subj: Alternative Dispute Resolution Process		Note: Use letter during initial counseling session
Memo subj: Right of Anonymity		Note: Use letter during initial counseling session.
Memo subj: Right to Representation		Note: Use letter during initial counseling session.
Memo subj: Designation of Attorney		Note: Use letter during initial counseling session.
Memo subj: Notice of Final Interview and Right to File a Complaint		Note: Use letter during final interview session
Memo Review, Hearing, Appeal Rights		Note: Use this during final interview
Memo subj: Withdrawal of EEO Complaint		Note: Use this letter, only if needed
Memo subj: Agreement to Extend Counseling for 30 days		Note: Use this letter, only if complainant and management agree that resolution is imminent.
Formal Discrimination Complaint Form NGB Fm 713-5-R		Note: Give to complainant when you do the final interview
EEO Counselor's Report		Note: Complete and give to SEEM NLT 3 days after the final interview date

*If the letter is not needed indicate so in the comments block

The following is your reference regulation: NGB (AR) 690-600/NGR(AF) 40-1614, Vol II

Attachment 1

Date

SUBJECT: The Pre-Complaint Process

TO: _____
Name of Aggrieved Person

On this date we discussed matters giving rise to your interest in filing an equal employment opportunity complaint. At this time you state you prefer not to enter into the pre-complaint process which leads to filing an EEO Complaint.

This is to let you know that you have 45 calendar days from the date the last Incident occurred. To determine the end of this 45-day period, the first day is counted the day after the event occurred. The last day must fall on a working day; not weekend or holiday. The last event we talked about occurred on _____. Starting on the following day, the last day you have to file a complaint is _____.

If I can be of further assistance, please contact me.

Signature

EEO Counselor Printed Name

Attachment 2

SUBJECT: Rights and Responsibilities for Complaints of Discrimination

MEMORANDUM FOR: _____
Name of Person Counseled

1. If you believe that you have been discriminated against, you have certain rights and responsibilities under the National Guard Civilian Discrimination Complaint System of National Guard Regulation (AR) 690-600/ National Guard Regulation (AF) 40-1614 and title 29 Code Of Federal Regulations Part 1614. Complaints under these regulations must:

- a. At the initial counseling session, counselors must advise individuals in writing of their Rights and Responsibilities. At a minimum those rights include the following:
- b. Prior to filing a formal complaint, you have the right to anonymity.
- c. You have the right to representation throughout the complaint process including the counseling stage. The EEO counselor is not an advocate for either the aggrieved person or the agency but acts strictly as a neutral in the EEO process.
- d. You have the right to choose between the agency's alternative dispute resolution (ADR) process or EEO counseling, where the agency agrees to offer ADR. The EEOC's revised regulation requires that agencies establish or make available an ADR program beginning January 1, 2000.
- e. You may be required to choose between a negotiated grievance procedure and the EEO complaint procedure. Consult your EEO counselor for clarification.
- f. You may be required to choose between the EEO complaint procedure and an appeal to the merit systems protection board (MSPB). Consult your EEO counselor for clarification.
- g. You are required to file a complaint within 15 calendar days of receipt of the counselor's notice of right to file a formal complaint in the event you wish to file a formal complaint at the conclusion of counseling or ADR.
- h. You may file a notice of intent to sue and file a lawsuit under the ADEA instead of an administrative complaint of age discrimination, when age is alleged as a basis for discrimination pursuant to 1614.201(a).
- i. You have the right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the equal pay act even though such claims are also cognizable under title vii.

Attachment 3

- j. You have the right to request a hearing before an EEOC administrative judge (except in a mixed case) after completion of the investigation or after 180 calendar days from the filing of a formal complaint, whichever comes first. After November 9, 1999, your request should be made directly to the appropriate EEOC office, and
 - k. You must notify the responding agency of your hearing request. Consult the EEO counselor for information on where a request for a hearing and notice to the agency should be sent.
 - l. You have the right to an immediate final decision after an investigation by the agency in accordance with 1614.108(f).
 - m. You have the right to go to U.S. district court 180 calendar days after filing a formal complaint if no final action has been taken on the complaint, or 180 days after filing an appeal if no decision has been issued on the appeal.
 - n. You must mitigate damages, i.e., you must look for other appropriate employment and you must seek treatment for any injury you claim.
 - o. You must keep the agency and EEOC informed of your current mailing address and to serve copies of hearing requests and appeal papers on the agency.
 - p. Where counseling is selected, the right to receive in writing within 30 calendar days of the first counseling contact (unless the aggrieved person agrees in writing to an extension) a notice terminating counseling and informing the you of:
 - (1) The right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,
 - (2) The appropriate official with whom to file a formal complaint, and
 - (3) Your duty to immediately inform the agency if you retain counsel or a representative.
2. Where you agree to participate in an established ADR program, the written notice terminating the counseling period will be issued upon completion of the dispute resolution process or within ninety (90) calendar days of the first contact with the EEO counselor, whichever is earlier.
3. Only claims raised at the counseling stage or claims that are like or related to them may be the subject of a formal complaint or an amendment a complaint after it has been filed.
4. Your rejection of an agency's offer of resolution made pursuant to section 1614.109(c) 29 CFR 1614, may limit the amount of attorney's fees or costs you can recover.

If you have filed two or more complaints, the agency must consolidate all filed complaints by the same complainant after appropriate notice to you. Section 1614.606. When a complaint has been consolidated with one or more earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint.

Signature

EEO Counselor Printed Name

I have read and understand my rights and responsibilities in this notice and the enclosures and have had them explained to me by the EEO counselor or the State Equal Employment Manager.

Signature of Person Counseled

Printed Name

Date Signed

Attachment 3

RIGHT TO REPRESENTATION

I have been informed that I have the right to have a representative at any stage of the EEO complaint process, including the counseling stage. The representative may accompany, advise, and represent me.

I understand that the EEO counselor is not a representative, either for me or the agency.

I understand that the equal employment opportunity commission, in management directive 110, federal sector processing manual, does not permit certain EEO officials to serve as a representative.

I understand that the agency may disqualify a representative where there would be a conflict with the official or collateral duties of the representative.

I understand that employees of the agency may serve as my representative, but also that they may decline to serve for whatever reason they choose.

I WANT / DO NOT want a representative. If yes, my representative will be:

Name: _____

Address: _____

Phone: (_____) _____

Signature of Person Counseled

Printed Name

Date Signed

Attachment 4

DESIGNATION OF ATTORNEY

I have been informed that I have the right to have a representative at any stage of the EEO complaint process, including the counseling stage. The representative may accompany, advise, and represent me.

I understand that if I choose an attorney, service of documents and decisions on the complaint will be made to the attorney and not to me. The time limits of the National Guard regulation (AR) 690-600/ngr (AF) 40-1614 are based on the receipt of materials or notices by myself will be computed from the time of their receipt by my attorney.

I want / do not want an attorney as my representative. If yes, my attorney will be:

Name: _____

Address: _____

Phone: (_____) _____

Signature of Person Counseled

Printed Name

Date Signed

RIGHT TO ANONYMITY

I have been advised that I have the right to remain anonymous during the EEO counseling.

I understand that if the matter is not resolved to my satisfaction and I file a formal complaint of discrimination, I lose the right to remain anonymous. (Please initial)

___ I want to remain anonymous during counseling.

___ I do not want to remain anonymous during counseling.

Signature of Person Counseled

Printed Name

Date Signed

ELECTION OF PROCEDURES FOR DISCRIMINATION COMPLAINTS

1. If you believe that you have been discriminated against because of race, color, religion, gender (to include sexual harassment), age, national origin, physical or mental handicap, or have been subjected to retaliation, restraint, interference, or coercion in connection with an equal employment opportunity matter and if the discrimination involves an employment matter subject to the control of the national guard, you may have a choice of how to file your complaint and to have it resolved.

2. Your options are as follows:

A. If you are not a member of a bargaining unit covered by a union contract you must follow the EEO complaint procedures established by the Equal Employment Opportunity Commission (EEOC) as outlined in National Guard Regulation (AR) 690-600/National guard Regulation (AF) 40-1614 and governed by title 29 Code of Federal Regulations Part 1614.

b. If you are a member of a bargaining unit covered by a union contract and if the negotiated grievance procedures in that contract do not prohibit the raising of allegations of discrimination, you may:

(1) Follow the discrimination complaint procedures in paragraph 2a, above; or

(2) Follow the negotiated grievance procedure in your union contract. If you elect this option, you have the right to appeal to the EEOC the final decision of the Adjutant General, the arbitrator, or the Federal Labor Relations Authority.

3. If your complaint is a mixed case, that is, if it is the result of alleged discrimination or retaliation and involves an action, which is appealable to the Merit Systems Protection Board (MSPB) you may have a third option. (National Guard technicians have appeal rights to the MSPB in cases of: (1) failure to properly restore from military service, (2) failure to properly restore from injury, and (3) denial of within-grade increase for general schedule personnel.) You may:

a. Follow the discrimination complaint procedures in paragraph 2a, above; or

b. Use the negotiated grievance procedure if you are a member of a collective bargaining unit, as outlined in paragraph 2b, above; or

c. Appeal directly to the MSPB. If you chose this route, you may ask the EEOC to review the MSPB final decision.

Attachment 7

Initially, you may choose only one of the above options; election of one automatically eliminates the availability of the others. Your election is made simply by filing in writing a formal EEO complaint after completing counseling, filing a written grievance through a negotiated grievance procedure, or filing an appeal with the MSPB. However, if the MSPB dismisses your appeal for jurisdictional reasons, you may then file the complaint under the EEO procedures.

4. The EEO counselor will explain each of these options to you. You may also review chapters 3 and 10 of volume ii of National Guard Regulation (AR) 690-600/National Guard Regulation (AF) 40-1614 that provides more details on your options. You may review that regulation by visiting your EEO counselor or State Equal Employment Manager.

5. If you have any other questions on this matter you may contact the State Equal Employment Manager, the Labor Management Relations Specialist in the Support Personnel Management Office, or your union representative.

Signature of Person Counseled

Attachment 7

AGE DISCRIMINATION PROCEDURES FOR DISCRIMINATION COMPLAINTS

1. To file an age discrimination complaint you must have been at least 40 years of age when the alleged discrimination took place. If you believe that you have been discriminated against because of your age or have been subjected to reprisal, restraint, interference, or coercion in connection with an equal employment opportunity matter involving your age and if the discrimination involves a matter that is subject to the control of the National Guard, you may have an additional choice of filing your complaint. You may:

a. File a complaint as described in the "election of procedures for discrimination complaints" that was provided to you by the EEO counselor; or

b. Elect to bypass the administrative procedure and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

2. If you bypass the administrative procedure and file a civil action, your notice of intent to sue should be dated and must contain the following information:

a. Statement of intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967 (ADEA), as amended.

b. Your name, address, and telephone number.

c. Name, address, and telephone number of your representative, if any.

d. Name and location of the federal agency or installation where the alleged discriminatory action occurred.

e. Statement of the nature of the alleged discriminatory action(s).

f. Date(s) the alleged discriminatory action occurred.

g. Your signature or the signature of your representative.

3. Notices of intent to sue under the ADEA must be submitted to:

Federal Sector Programs
Equal Employment Opportunity Commission
1801 L Street, NW
Washington, D.C. 20507

4. If you elect to file an administrative complaint rather than filing directly in federal court, as described above, you must exhaust your administrative remedies before filing a civil action. These remedies are exhausted--

a. After the National Guard Bureau has issued a final decision or 180 days after filing your complaint, if NGB has not issued a final decision.

b. After the EEOC has issued a decision on an appeal or 180 days after filing your appeal if there has been no decision.

5. Because the courts have issued different decisions on what is the correct statute of limitations in the age discrimination in employment act as it applies to federal employees, if you elect to file a civil action instead of using the administrative process, you should file as soon as possible after the expiration of the 30 day waiting period. You may also wish to seek competent legal advice regarding the facts of your particular case and the jurisdiction involved before making your election of procedures.

6. If you have any other questions, contact the EEO counselor or State Equal Employment Manager.

Signature of Person Counseled

Attachment 8

SUBJECT: Agreement to Participate In the Alternate Dispute Resolution Process

FOR: _____
Name of EEO Counselor

1. On _____ I brought the matters giving rise to my complaint to the attention
Date
of _____, an EEO counselor/the State Equal Employment Manager, and had my initial counseling session on _____. You have advised me that the National Guard has an alternate dispute resolution process and I understand that:

A. The purpose of the dispute resolution process is to help resolve discrimination complaints before they filed as formal complaints. You have reviewed with me appendix b of volume ii of National Guard regulation (AR) 690-600/National Guard Regulation which explains how the dispute resolution process works.

B. In participating in the Alternate Dispute Resolution process I do not forfeit my right to file a formal complaint if my complaint is not resolved.

C. If my complaint is resolved, any settlement agreement that is reached will be reduced to writing and I will be provided a copy of the agreement.

d. By participating in the dispute resolution process I agree to extend the pre-complaint process not to exceed 60 (sixty) calendar days, for a total of 90 (ninety) days from the date I first brought the matters giving rise to my complaint to the attention of an EEO counselor or the SEEM.

E. If by the end of that extension my complaint has not been resolved, a final interview will be held with me and I will receive a notice of right to file a formal complaint. I understand that this will take place not later than 90 calendar days from the date I first brought the matters giving rise to my complaint to the attention of an EEO counselor or the SEEM.

JFHQ-HRO-EO

SUBJECT: Agreement to Participate In the Dispute Resolution Process

2. I agree to participate in the Alternate Dispute resolution process established in appendix b of volume ii of National Guard Regulation (AR) 690-600/National Guard Regulation (AF) 40-1614. In addition to the dispute resolution panel procedure with a review by the adjutant general, I DO / DO NOT (Delete one option and initial) want to participate in the confidential mediation process.

Signature of Complainant

JFHQ-HRO-EO

Date

SUBJECT: Agreement to Extend Counseling for 30 Days

FOR: _____
Name of EEO Counselor

1. On _____ I brought the matters giving rise to my complaint to the
Date
attention of _____, an EEO counselor/the State Equal Employment Manager and had my initial counseling session on _____.
2. You have advised me that although your inquiry into my complaint cannot be completed within the required 30 days from the date I first brought the matters giving rise to my complaint to the attention of an EEO counselor or the SEEM, with some additional time you may be able to resolve my complaint.
3. You have also informed me that the SEEM agrees with this assessment and has approved an extension of the inquiry and counseling not to exceed 30 (thirty) calendar days, for a total of 60 (sixty) days from the date I first brought the matters giving rise to my complaint to the attention of an EEO counselor or they SEEM.
4. I agree to the extension. I understand that if by the end of that extension my complaint has not been resolved, you will hold a final interview with me and will issue me a notice of right to file a formal complaint. I understand that this will take place not later than 60 calendar days from the date I first brought the matters giving rise to my complaint to the attention of an EEO counselor or they SEEM.

Signature of Complainant

Attachment 10

REVIEW, HEARING, APPEAL, AND CIVIL ACTION RIGHTS

1. Review. The acceptance or dismissal of your complaint will be automatically reviewed by the National Guard Bureau. If the decision to accept or dismiss all or part of your complaint is reversed by the National Guard Bureau you and the state National Guard will be notified. However, if you plan to appeal the dismissal of your complaint, you must do so within 30 calendar days after the receipt of the dismissal.
2. Hearing. If within 180 calendar days after the filing of a formal complaint and any extension agreed on, but not to exceed 90 days, the National Guard Bureau has not issued a notice of investigation completion, you have a right to request a hearing by an Equal Employment Opportunity Commission administrative judge by writing to the EEOC district office for your area. You may obtain that address from any EEO counselor, the State Equal Employment Manager or Appendix C of Volume II of National Guard Regulation (AR) 690-600/National Guard Regulation (AF) 40-1614.
3. Appeal. If all or a part of your complaint is dismissed and you are dissatisfied with the dismissal, or if you are dissatisfied with a final decision issued by the National Guard Bureau, you may file an appeal and a statement or brief in support of the appeal with:

Director, Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848
Washington, D.C. 20036

The appeal must be in writing and should use EEOC Form 573, notice of appeal/petition, indicating what is being appealed. The appeal may be filed by mail, personal delivery or facsimile. A copy of the appeal and a copy of any statement or brief in support of the appeal must be provided to your State Equal Employment Manager and to:

Complaints Management and Support Activity
National Guard Bureau NGB-EO
1411 Jefferson Davis Highway, Suite 9200
Arlington VA 22202-3231

4. Time limit for an appeal. The appeal must be filed within 30 calendar days after the receipt of the dismissal notice or final decision. If the complainant is represented by an attorney of record, then the 30 day time period will be based from the date of the receipt of the dismissal notice or final decision by the attorney. Any statement or brief in support of the appeal must be submitted within 30 calendar days of filing the appeal.

5. Civil Action. In accordance with 29 CFR 1614.408, a complainant is authorized to file a civil action in an appropriate U.S. District Court under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, or the Rehabilitation Act, as follows:

- (a) Within 90 days of receipt of the final decision on an individual or class complaint if no appeal has been filed;
- (b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and a final decision has not been issued;
- (c) Within 90 days of receipt of the commission's final decision on appeal; or after 180 days from the date of filing an appeal with the commission if there has been no final decision by the commission.

6. Representation in civil action. If you do not have, or are unable to obtain the services of a lawyer, you may request the court to appoint a lawyer to represent you. In such circumstances as the court may deem just, the court may appoint a lawyer and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the time limits for filing the civil action and in such form and manner as the court may require.

7. Proper defendant. If you file a civil action, you must name the Secretary of the Army or the Air Force, as listed in the subject of this notice, as the defendant. Failure to name Secretary of the Army or the Air Force, as appropriate, may result in the loss of any judicial redress to which you may be entitled.

8. Mixed case complaints. If your complaint includes an action that is also appealable to the Merit Systems Protection Board (MSPB), you have the following rights:

- a. If your complaint is dismissed because you filed an appeal to the MSPB, you may not file an appeal with the EEOC unless you claim that the complaint or issue dismissed was not a mixed case matter. However, you will have the right to petition the EEOC to review the MSPB final decision on the discrimination issue.

- b. If you are dissatisfied with a final decision issued by the National Guard Bureau, you may file an appeal with the MSPB, rather than the EEOC, and your appeal must be filed within 20 calendar days after the receipt of the final decision.

- c. If you have not received a National Guard Bureau final decision within 120 days after filing your complaint, you may at any time thereafter file an appeal with the MSPB as specified 5 CFR 1201.154(a) or you may file a civil action.

JFHQ-HRO-EO

Date

SUBJECT: Notice of Final Interview and Right to File a Complaint

FOR _____, Kansas _____
Full name of complainant Air / Army National Guard

1. This is notice that on the above date the final counseling interview was held in connection with the matter you presented to me as an EEO counselor. You initially brought this matter to the attention of an EEO counselor or the SEEM on _____ and had an initial counseling session on _____. You stated that you believed that you were discriminated on the basis of _____.
2. If you believe you have been discriminated against on the basis of race, color, religion, gender (to include sexual harassment), national origin, age, physical or mental handicap, retaliation for participating in an EEO activity, or for opposing laws, you have the right to file a complaint of discrimination within 15 calendar days after receipt of this notice.
3. The complaint must be in writing on NGB Form 713-5, which is enclosed with this notice. It must be filed in person, by facsimile, or by mail with the State Equal Employment Manager (SEEM) or the adjutant general at the following address:

JFHQ, Kansas National Guard
State Equal Employment Manager
2800 SW Topeka Blvd
Topeka, KS 66611-1287
FAX: 785.274.1558

JFHQ, Kansas National Guard
Adjutant General
2800 SW Topeka Blvd
Topeka, KS 66611-1287
FAX: 785.274.1682

Attachment 12

JFHQ-HRO-EO

SUBJECT: Notice of Final Interview and Right to File a Complaint

For _____, Kansas _____
Full Name of Complainant Air / Army National Guard

4. Your formal complaint must state clear and specific issues, which form the basis of your complaint. If you include issues on which you have not been counseled, such issues may be dismissed. Each issue must contain the specific act or personnel action that you believe was discriminatory, the date of the occurrence, and the basis of the discrimination. If your issues are not clear or specific or do not contain this information, you will have to clarify your issues before the complaint can be processed. To avoid any delay, your EEO counselor or the SEEM are ready to assist you in completing NGB Form 713-5 and in preparing your formal complaint, should you choose to proceed.

5. The complaint must also state whether you have filed a grievance under a negotiated grievance procedure or an appeal to the Merit System Protection Board on the same subject matter and if so, the date it was filed.

6. If you retain a representative you must provide his or her name, address, and telephone number to the SEEM at the above address. If your representative is an attorney, you must so indicate. You and your representative will receive a written notice of receipt of your discrimination complaint.

Enclosure
NGB Form 713-5-R

Signature

Printed Name
EEO Counselor

Attachment 12

SUBJECT: Notice of Final Interview and Right to File a Complaint

FOR: _____, Kansas _____
Full Name of Complainant Air / Army National Guard

Street or P.O. Box

City, State Zip

1. A final counseling interview was not held in person because of the following

Reason(s). _____

I have, therefore, summarized the items I would have discussed with you in the final interview and enclosed this summary to this notice.

2. You initially brought this matter to the attention of an EEO counselor or the SEEM on _____ and had an initial counseling session on _____. You stated that you believed that you were discriminated on the basis of _____.

3. If you believe you have been discriminated against on the basis of race, color, religion, gender (to include sexual harassment), national origin, age, physical or mental handicap, retaliation for participating in an EEO activity, or for opposing an unlawful employment practice under the anti-discrimination laws, you have the right to file a complaint of discrimination within 15 calendar days after receipt of this notice.

Attachment 13

JFHQ-HRO-EO

SUBJECT: Notice of Final Interview and Right to File a Complaint

For _____, Kansas _____
Full Name of Complainant Air / Army National Guard

4. The complaint must be in writing on NGB Form 713-5, which is enclosed with this notice. It must be filed in person, by facsimile, or by mail with the State Equal Employment Manager (SEEM) or the adjutant general at the following address:

JFHQ, Kansas National Guard
State Equal Employment Manager
2800 SW Topeka Blvd
Topeka, KS 66611-1287
FAX: 785.274.1558

JFHQ, Kansas National Guard
Adjutant General
2800 SW Topeka Blvd
Topeka, KS 66611-1287
FAX: 785.274.1682

5. Your formal complaint must state clear and specific issues, which form the basis of your complaint. If you include issues on which you have not been counseled, such issues may be dismissed.

6. Each issue must contain the specific act or personnel action that you believe was discriminatory, the date of the occurrence, and the basis of the discrimination. If your issues are not clear or specific or do not contain this information, you will have to clarify your issues before the complaint can be processed. To avoid any delay, your EEO counselor or the SEEM are ready to assist you in completing NGB Form 713-5 and in preparing your formal complaint, should you choose to proceed.

7. The complaint must also state whether you have filed a grievance under a negotiated grievance procedure or an appeal to the Merit System Protection Board on the same subject matter and if so, the date it was filed.

8. If you retain a representative you must provide his or her name, address, and telephone number to the SEEM at the above address.

Attachment 13

JFHQ-HRO-EO

SUBJECT: Notice of Final Interview and Right to File a Complaint

FOR: _____, Kansas _____
Full Name of Complainant Air / Army National Guard

Address

If your representative is an attorney, you must so indicate. You and your representative will receive a written notice of receipt of your discrimination complaint.

Enclosure

1. NGB Form 713-5-R
2. Summary of Final Interview

Signature

Printed Name EEO Counselor

Attachment 13

JFHQ-HRO-EO

Date

SUBJECT: Voluntary Withdrawal of Equal Employment Opportunity Complaint

TO: _____
SEEM/EEO Counselor Name

1. On _____ I brought the matters giving rise to my complaint the attention
Date
of _____, an EEO counselor/the State Equal Employment Manager and had my initial counseling session on _____.

2. I understand: (please initial)

_____ a. I may withdraw a complaint at any time.

_____ b. Such withdrawal must be completely voluntary.

_____ c. I may not be coerced into any withdrawal action.

3. I withdraw my complaint effective immediately.

Signature of Person Counseled

Printed Name

EEO COUNSELOR'S REPORT
(29 CFR, Section 1614.105)

AGENCY (Name and address)

AGGRIEVED PERSON

Name:

Job Title, Series and Grade:

Work Address (if different than above):

Telephone (Work):

(Home):

Home Address:

Representative (Name):

Phone:

Address:

CHRONOLOGY OF EEO COUNSELING

Date of Initial Contact:

Date of Initial Interview:

45th Day After Event:

Reason for Contact Beyond 45th Day (if applicable):

Date of Final Interview:

Date of Notice of Right to File a Formal Complaint:

Date Counselor's Report Requested

Date Counselor's Report Submitted:

BASIS FOR ALLEGED DISCRIMINATION

- ☐ Race (Specify):
 - ☐ Color (Specify):
 - ☐ Religion (Specify):
 - ☐ Sex (Specify):
 - ☐ National Origin (Specify):
 - ☐ Age (Date of Birth):
 - ☐ Physical Disability (Specify):
 - ☐ Mental Disability (Specify):
 - ☐ Reprisal (Identify earlier event and/or opposed practice, give date):
-

PRECISE DESCRIPTION OF THE ISSUE(S) COUNSELED

REMEDY REQUESTED

EEO COUNSELOR'S CHECKLIST – THE COUNSELOR ADVISED THE AGGRIEVED PERSON IN WRITING OF THE RIGHTS AND RESPONSIBILITIES CONTAINED IN THE EEO COUNSELOR CHECKLIST.

SUMMARY OF INFORMAL RESOLUTION ATTEMPTS

A. THE COUNSELOR ATTEMPTED RESOLUTION

1. Personal contacts:
2. Documents reviewed:
3. Summary of Informal Resolution Attempts:

B. IF AGGRIEVED OPTED FOR ADR, COUNSELOR'S STATEMENT THAT THE ADR PROCESS WAS FULLY EXPLAINED TO THE AGGRIEVED INDIVIDUAL/SUMMARY OF INFORMATION GIVEN TO THE AGGRIEVED INDIVIDUAL AND THE AGENCY BY THE COUNSELOR

Counselor Name (Print)

Date: _____

Signature: _____

Office Mailing Address: _____

Telephone: _____

Attachment 15

NGR 713-5-R should be attached here.